

SAN JUAN CITIZENS ALLIANCE

IBLA 88-540

Decided September 14, 1988

Appeal from a decision of the San Juan Resource Area, Bureau of Land Management, approving application for a permit to drill. C-17340.

Appeal dismissed; case remanded.

1. Appeals: Generally -- Appeals: Jurisdiction -- Board of Land Appeals -- Bureau of Land Management -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Drilling

Any party adversely affected by a decision of the Bureau of Land Management on an application for a permit to drill under 43 CFR 3162.3-1 may request administrative review by the State Director of the Bureau of Land Management in accordance with 43 CFR 3165.3(b). Any party adversely affected by the decision of the State Director under 43 CFR 3165.3(b) may appeal that decision to the Board of Land Appeals.

APPEARANCES: Jim Fitzgerald, Durango, Colorado, for the San Juan Citizens Alliance; Lowell L. Madsen, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

On June 1, 1988, the Area Manager of the San Juan Resource Area, Bureau of Land Management (BLM), approved the application of Amoco Production Company to drill a gas well on lease C-17340 in La Plata County, Colorado. The well was spudded on June 20, 1988, and reached its total depth on June 25.

On July 1, 1988, the San Juan Citizens Alliance and the Western Colorado Congress filed a notice of appeal and request for stay with the San Juan Resource Area Office "[p]ursuant to 43 C.F.R. 4.411." The appeal was transmitted to the Board by the Colorado State Director of BLM on July 13, 1988, with the explanation that it had been delayed "due to confusion with State Director review provisions at 43 CFR 3165.3(b)."

On July 27, 1988, the State Director filed a request that we return the case to his office, stating:

We believe it was incorrect to transmit the appeal for your review and decision. The Western Colorado Congress is appealing a decision of the San Juan Resource Area Manager approving an

Application for Permit to Drill, which was filed in accordance with 43 CFR 3162.3-1. The regulations set out the review and appeal process for any party adversely affected by such a decision at 43 CFR 3165.3(b). According to this regulation, adversely affected parties must first request a State Director review. Any party adversely affected by the decision of the State Director may then appeal to the Interior Board of Land Appeals pursuant to 43 CFR Part 4.

We issued an order on July 28, 1988, taking the request for stay and the request for remand under advisement to provide the parties an opportunity to "respond to the procedural matters at issue," and inviting BLM to submit further argument on the issue of whether the appeal was properly before the Board.

BLM filed a response on August 23, 1988, suggesting appellants' request for stay might be moot and elaborating its view that the appeal should be treated as a request for administrative review by the State Director under 43 CFR 3165.3(b).

43 CFR 3165.3 used to provide that a lessee or operator could request a technical and procedural review by the State Director of "any instructions, orders, or decisions issued by the authorized officer under this part." 43 CFR 3165.3 (1986). 43 CFR 3165.4 used to provide that "[i]nstructions, orders or decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 4 of this title if Federal lands are involved." 43 CFR 3165.4 (1986).

These regulations were amended effective April 21, 1987. 43 CFR 3165.3(b) now provides that "[a]ny adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation * * *. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals as provided in § 3165.4 of this part." 43 CFR 3165.4(a) in turn provides that "[a]ny party adversely affected by the decision of the State Director after State Director review, under 3165.3(b) of this title, of a notice of violation or assessment or of an instruction, order, or decision may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations set out in Part 4 of this title."

The April 1987 rulemaking also amended the list of responsibilities of the authorized officer in 43 CFR 3161.2 to replace "to perform technical and procedural reviews" with "to perform administrative reviews." See 52 FR 5391 (Feb. 20, 1987). That list also states one of the authorized officer's responsibilities is to "approve and monitor other operator proposals for drilling, development or production of oil and gas." See 43 CFR 3162.3-1(f).

[1] Thus, a decision on an application for a permit to drill is a decision under the regulations in Part 3160 for which any adversely affected party may request administrative review by the State Director under 43 CFR 3165.3(b). Review of such a decision by the Board consists of review of the State Director's decision after his administrative review. 43 CFR 3165.3(b); 43 CFR 3165.4(a).

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's request for remand of appellants' appeal and request for stay of the June 1, 1988, decision of the San Juan Resource Area Manager to the Colorado State Director of BLM is granted, and the appeal is dismissed.

Will A. Irwin
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

